IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 3742 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISMAILBHAI @ LOTO HABIBBHAI SHEIKH

Versus

STATE OF GUJARAT

Appearance: MS SUBHADRA G PATEL for the Petitioner.
Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 5.1.2004, by which he is detained as a `bootlegger' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner has also been served with the grounds of detention. In the grounds of detention, there is a reference about four criminal cases. All these cases are registered under the Bombay Prohibition Act. It is alleged against the petitioner that he is

dealing in liquor and violating the provisions of the Bombay Prohibition Act.

After considering the said cases and after considering the statements of witnesses, which are not disclosed to the petitioner, the petitioner is detained under PASA. The said order is under challenge in this petition.

The learned Advocate for the petitioner submitted that the detenu had sent a representation, through his son, on 24th February, 2004, which was received by the detaining authority on 25.2.2004. It is submitted by the learned Advocate for the petitioner that the said representation was not forwarded immediately to the State Government and, hence, there is an inaction and want of attention to the representation, which can be considered as sufficient to have infringed the right of the detenu of making an effective representation. This point is taken by way of amendment in the petition. Copy of the said amendment was also made available to the learned Advocate for the respondents.

Mr.Kogje, learned AGP, after going through the records, submitted that the representation dated 24.2.2004 was received by the detaining authority on 25.2.2004 and the same was forwarded to the State Government on 6th March, 2004, and the State Government has received the said representation on 15th March, 2004. Mr.Kogje also further pointed out, after going through the file, that the same was decided on 16th March, 2004.

In view of the aforesaid submission of Mr.Kogje, learned AGP, it is clear that there is no explanation as to why the representation was kept pending by the detaining authority from 25th February, 2004 upto 6th March, 2004. There is a delay in forwarding the said representation for a considerable period.

The learned Advocate for the petitioner relied upon an unreported decision of this Court (Coram : A.L. Dave, J.) in Mulshankar Kalyanbhai Jani v. State of Gujarat, rendered in Special Civil Application No.9664 of 1999, on 16.3.2000, wherein on the ground of unexplained delay in despatching the representation, this Court has set aside the detention order. In paragraph 6, this Court has observed as under :-

" ... ...

6. Having regard to the rival side contentions,

> the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on 18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on 16.11.1999 and how it was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation.
>
> ... ..."

The petition is not opposed by the respondents by filing any affidavit-in-reply as to why the representation submitted by the petitioner on 24.2.2004, and which was received by the detaining authority on 25.2.2004, was forwarded to the State Government only on 6th March, 2004. It goes without saying that the representation of the petitioner was required to be dealt with promptly and there is considerable delay in taking the ultimate decision on the same. The delay in deciding the representation occurred in view of the delay in despatching the representation. Normally, such representations are required to be forwarded to the appropriate authority for decision immediately and are not required to be kept pending. In that view of the matter, this petition is required to be allowed on the aforesaid ground of delay on the part of the detaining authority in forwarding the representation to the State Government.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

20th July, 2004 (P.B. Majmudar, J.)

***

(apj)